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9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA,	)	No.: CR 05-00518-WHA
	)	
13 Plaintiff,	)	<del>[PROPOSED]</del>
	)	<b>ORDER OF DETENTION</b>
14 v.	)	<b>PENDING TRIAL</b>
	)	
15	)	
	)	
16 LARRY BROWN,	)	
	)	
17 Defendant.	)	
	)	

18

19 This matter came before the Court on September 22, 2005 for a detention hearing. The

20 Defendant, Larry Brown, was present and represented by Assistant Federal Public Defender

21 Ronald Tyler. Assistant United States Attorney Michelle Morgan-Kelly appeared for the United

22 States of America.

23 Pretrial Services submitted a report to the Court and the parties that recommended

24 detention. The Government requested detention, and the Defendant opposed. Proffers and

25 arguments regarding detention were submitted by the parties at the hearing.

26 Upon consideration of the facts, proffers and arguments presented, the Court finds by a

~~[PROPOSED]~~ DETENTION ORDER: BROWN  
CR 05-00518-WHA

preponderance of the evidence that no condition or combination of conditions of release will reasonably assure the appearance of the Defendant as required in light of his history, which includes sixteen parole violations, the use of seventeen different aliases, the use of five different birth dates, the fact that he fled during the instant offense, the absence of any sureties, and other factors set forth in the Pre Trial Services report. The Court also notes that while Defendant's record of eighteen prior bench warrants standing alone might be insufficient, it is more significant when considered in light of the other factors listed above. The Court also finds by clear and convincing evidence that no condition or combination of conditions of release will reasonably assure the safety of the community, in light of the Defendant's criminal history that includes violent and firearms-related offenses committed as recently as 2004, as well as the aforementioned parole revocations. Accordingly, the Court concludes that the Defendant must be detained pending trial in this matter.

The present order supplements the Court's findings at the detention hearing and serves as written findings of fact and a statement of reasons as required by 18 U.S.C. § 3142(i)(1).

The Bail Reform Act of 1984, 18 U.S.C. §§ 3141–50, sets forth four factors that the Court must consider in determining whether pretrial detention is warranted. These factors are:

- (1) the nature and circumstances of the offense charged (§ 3142(g)(1));
- (2) the weight of the evidence against the person (§ 3142(g)(2));
- (3) the history and characteristics of the person including, among other considerations, character, employment, family, and past conduct and criminal history (§ 3142(g)(3)); and
- (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release (§ 3142(g)(4)).

With regard to the first factor, the nature and circumstances of the offense charged, the Defendant is accused of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g), which carries a maximum penalty of 10 years imprisonment.

1 The second factor, the weight of the evidence, is considered the least important. The Bail  
2 Reform Act neither requires nor permits a pretrial determination of guilt. *United States v. Gebro*,  
3 948 F.2d 1118, 1121–22 (9th Cir. 1991). The Court notes that the instant offense occurred while  
4 the Defendant was on probation. Although the government made a proffer as to the weight of the  
5 evidence, which included that defendant allegedly was on the street in possession of a shotgun  
6 with a 14-inch barrel and fled when uniformed officers approached, the Court finds that even  
7 absent the proffered facts relating to the charged offenses, Defendant should be detained.

8 The Court further finds that the third factor, the history and characteristics of the  
9 defendant, and the fourth factor, the nature and seriousness of danger to the community, militate  
10 in favor of detention. The Pretrial Services Report confirms that the Defendant's employment  
11 status and housing situation are not stable, and that he has an extensive criminal history, which  
12 includes eight felony convictions, some of which were for firearms-related offenses and violent  
13 crimes. In addition, as noted above, the Defendant has suffered at least sixteen parole  
14 revocations, some of which were due to his continued arrests.

15 Accordingly, the Court finds by clear and convincing evidence that no condition or  
16 combination of conditions of release will reasonably assure the safety of the community, and  
17 finds by a preponderance of the evidence that no condition or combination of conditions of  
18 release will reasonably assure the appearance of the Defendant as required.

19 Pursuant to 18 U.S.C. § 3142(i), IT IS ORDERED THAT:

20 (1) the defendant be, and hereby is, committed to the custody of the Attorney

21 General for confinement in a corrections facility separate, to the extent

22 practicable, from persons awaiting or serving sentences or being held in custody

23 pending appeal;

24 (2) the defendant be afforded reasonable opportunity for private consultation with


25 his counsel; and

26 (3) on order of a court of the United States or on request of an attorney for the

Government, the person in charge of the corrections facility in which the defendant is confined shall deliver the Defendant to an authorized Deputy United States Marshal for the purpose of any appearance in connection with a court proceeding.

Dated:

9/22/05

  
THE HON. JOSEPH C. SPERO  
United States Magistrate Judge

DETENTION ORDER: BROWN  
CR 05-00518-WHA